

(2002) 12 GAU CK 0028

Gauhati High Court

Case No: WP (C) No. 8614 of 2001

Jogeswar Borah

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: Dec. 4, 2002

Acts Referred:

- Assam Judicial Officer (Retirement) on Supernannuation Rules, 1995 - Rule 5

Citation: (2003) 1 GLR 277 : (2006) 3 GLT 162 : (2003) 1 GLT 339

Hon'ble Judges: P.P. Naolekar, C.J; Amitava Roy, J

Bench: Division Bench

Advocate: A.K. Bhattacharyya, G.K. Bhattacharyya, B.K. Singh, B. Choudhury and A.K. Choudhury, for the Appellant; K.P. Pathak, A.K. Thakur and D.P. Chaliha, for the Respondent

Final Decision: Dismissed

Judgement

P.P. Naolekar, C.J.

The petitioner, an Advocate at Golaghat Bar, was appointed in the Assam Judicial Service and he joined as. Judicial Magistrate on 13.2.1973. Later on, in due course the petitioner was promoted to Assam Judicial Service Grade-II and then to Grade-I in September, 1994. The petitioner was to complete the age of 58 years on 31.12.2001. The Assessing Committee of the Gauhati High Court (High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram & Arunachal Pradesh) constituted by the Full Court of the High Court has considered the case of the petitioner under the Assam Judicial Officers (Retirement) on Superannuation Rules, 1995 (hereinafter referred to as "the Rules 1995") recommended not to continue the services of the petitioner up to the age of 60 years. The recommendation made by the Assessing Committee has been accepted by the Full Court of the High Court and consequent thereof the order has been issued by the Governor of Assam compulsorily retiring the petitioner from service w.e.f. 31.12.2001. The order of compulsory retirement has been issued in exercise of the powers conferred under

Rule 5 of the Rules 1995 and on the recommendation of the Gauhati High Court.

2. Under Rule 5 a Judicial Officer shall retire from service on superannuation in the afternoon of the last day of the preceding month on which he attains the age of sixty years if the date of birth is the 1st day of any month, in other cases the official shall retire on the last day of the month in which he attains sixty years of age. The first proviso to Rule 5 gives option to Judicial Officer to exercise his option in writing before he attains the age of fifty seven years to retire at the age of fifty eight years. Under the second proviso to Rule 5 if the Judicial Officer did not exercise such option he shall retire on his attaining the age of sixty years if he is found fit and eligible to continue in service by the High Court after assessing and evaluating his record for his continued utility well within time before he attains the age of fifty eight years. Thus if the Judicial Officer did not exercise the option of retirement on his attaining the age of 58 years he shall normally continue in service till he attains 60 years. His continuation in service up to 60 years after he attains the age of 58 years is subject to his case is being cleared by High Court after assessing and re-evaluating his record. The High Court has the power to recommend retirement of a Judicial Officer at the age of 58 years and not to continue him in service till he attains the age of 60 years, if in the opinion of the High Court he does not hold utility for such continuation till the age of 60 years. Under the proviso the High Court gets an authority and jurisdiction to assess the utility of a judicial officer to be continued till the age of 60 years. If the High Court reaches to a conclusion that the Judicial Officer has to be continued beyond the age of 58 years up to the age of 60 years, his case shall be cleared by the High Court for such continuation, if the High Court reaches to a conclusion that his utility is, in not continuing his employment beyond the age of 58 years, the High Court may exercise the power of compulsorily retiring such judicial officer on attaining the age of 58 years in public interest. This power shall be exercised by the High Court by following the procedure for compulsory retirement under the service rules applicable to the judicial officers. If the recommendation is made by the High Court not to continue with the service of the judicial officer beyond the age of 58 years up to the age of 60 years under the third proviso, the State shall compulsorily retire the judicial officer on his attaining the age of 58 years.

3. The petitioner has been compulsorily retired on attaining the age of 58 years in exercise of this power by the Governor of Assam on recommendation of the High Court, it is the case of the petitioner that through out his service career he had carried out his duties sincerely and best of his ability and at no point, of time any adverse remarks had been recorded in his service record or any adverse remarks has ever been communicated to him by the High Court, therefore, his service could not have been dispensed with at the age of 58 years and he should have been allowed to continue in service till he attains the age of 60 years.

4. The respondent High Court has entered appearance and filed its affidavit, it is the case of the respondent that the entire service record of the petitioner was

considered by the Assessing Committee and on the basis of the record he was not found to be fit to continue beyond 58 years in the judicial service and accordingly recommendation to that effect, was made by the Committee on 17.10.2001, which was accepted by the Full Court. The High Court having exercised the power under the Rules after assessment of the service record of the petitioner no interference is called for in the order of compulsory retirement, of the petitioner;

5. We have heard learned counsel for the parties.

The object of Rule 5 with its provisos of Rules 1995 appears to be to weed out the worthless without the punitive extremes covered by Article 311 of the Constitution. After all, Administration, to be efficient, must not be manned by drones, do nothings, incompetents and un-worthies. They may not be delinquent who must be punished but may be a burden on the Administration if by insensitive, insouciant, unintelligent or dubious conduct impede the flow or promote stagnation, in a country where speed, sensitivity, probity, and non-irritative public relations and enthusiastic creativity are urgently needed, paper-logged processes and callous cadres are the besetting sin of the Administration, it is in public interest to retire a never-do-well, but to juggle with confidential reports when a man's career is at stake is a confidence trick contrary to public interest. Moreover, confidential reports are often subjective, impressionistic and must receive sedulous checking as basis for decision making. The appropriate authority, not the Court, makes the decision, but even so, a caveat is necessary to avoid misuse. (Reliance is placed in [T. Ramegowda Vs. R. Krishnamurthy and others](#),

6. The order of compulsory retirement is not a punishment and the Government employee is entitled to all retrial benefits including pension. The power to compulsorily retiring the employee can be exercised in public interest to effectuate the efficiency of the service. The dead wood needs to be removed to augment efficiency. Integrity in public service needs to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence.

7. The power to compulsory retire a judicial officer has to be exercised to advance the competency and efficiency in the judicial service. The judicial officer, if it is found, lagging incompetence or a deadwood whose continuation in service would adversely affect the competency in the judicial service the High Court can certainly recommend his compulsory retirement. In order to satisfy us and to appreciate that the authority has considered the overall performance of the petitioner throughout his service career, the learned counsel appearing for the High Court has produced the record. From the record produced before us we find the following entries in the Annual Confidential Reports of the petitioner from 1974 to 2000 :

Year of Assessment	Remarks of Reporting Officer	Remarks of Reviewing Officer/PJ	Remarks of Accepting Authority/ JAD/CJ
1974	Average	NIL	NIL
1975	No comment	NIL	NIL
1976	No comment	NIL	NIL
1977	No comment	NIL	NIL
1978	Satisfactory	NIL	NIL
1979	Average	NIL	NIL
1980	Not available	Not available	Not available
1981	Not available	Not available	Not available
1982	Average	NIL	NIL
1983	Not available	Not available	Not available
1984	Average	NIL	NIL
1985	Average	NIL	NIL
1986	Good	NIL	NIL
1987	Not available	Not available	Not available
1988	Average	Average	NIL
1989	Very Good	Very Good	No comment
1990	Good	Good	No comment
1991	Average	Average	Average
1992	NIL	NIL	Average
1993	Good	NIL	Good
1994	Good	Good	NIL
1995	Good	Good	Good

1996	NIL	Below average	Below average
1997	NIL	Average	Average
1998	NIL	NIL	Average
1999	NIL	NIL	Average
2000	NIL	NIL	Average

From the record it is apparent that ail through the petitioner was rated as an "average" officer and for some years he was rated as "good" and in one year as "very good". For the purpose of considering the usefulness of a judicial officer and his continuation in service overall assessment of the service has to be made if the High Court comes to a conclusion on consideration of overall records of the judicial officer that he should not be continued in the judicial service, such decision cannot be said to be arbitrary or not in public interest. On consideration of the materials placed before the Assessing Committee of the High Court the Assessing Committee recommended retirement of the petitioner under second proviso to Rule 5 of the Rules 1995. We have also seen the entire service record of the Judicial officer where he has been rated as an "average" officer for most of the period in his service career,

8. The scope of judicial review in the matter of compulsory retirement is limited. The Court can only look into the fact whether the Authority, before exercising the power to compulsorily retiring the judicial officer, is taken into consideration the overall record. The Court has also to look into the fact whether the decision taken by the authority is bona fide and to augment efficiency in the public interest. In the absence of any mala fide or arbitrary exercise of power, a possible different conclusion would not be a ground for interference by the Court in exercise of its judicial review. Once the Court is satisfied that the power of compulsory retirement of the judicial officer is exercised on consideration of over all record of the judicial officer and such power is not being exercised mala fide or arbitrarily, merely because the Court could have reached to a different conclusion than what has been arrived at by the Assessing Committee, could not be a ground in setting aside the order of retirement. On assessment of the overall service record if the Assessing Committee and the Full Court of the High Court have arrived at a conclusion that future continuation of the petitioner in service is not in the public interest, he being assessed to be an "average" officer, one cannot find fault with such decisions arrived at. Power to judicial review being limited our reaching to a other possible conclusion than that has been arrived at by the Assessing Committee and the Full Court of the High Court would not authorise us to take a different view in the matter and set at knot the decision taken by the High Court on overall assessment of the record placed before it. We could not find fault in the decisions taken by the

Assessing Committee and the Full Court of the High Court recommending the compulsory retirement of the petitioner. The State has acted on the recommendation of the High Court in compulsorily retiring the petitioner from service. The order of compulsory retirement is in accordance with the law and, in our considered view, does not require any interference.

9. Consequently, the Writ petition fails and is dismissed. However, in the facts and circumstances of the case there shall be no order as to costs.